

NTSB Order No.
EM-93

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 30th day of November, 1981

J. B. HAYES, Commandant, United States Coast Guard,

v.

GEORGE F. HOPKINS, Appellant.

Docket No. ME-88

OPINION AND ORDER

The appellant herein challenges a decision by the Commandant affirming an order suspending, on a finding of negligence, his mariner's license (No. 488588) for 3 months on 12 months probation.¹ The probationary suspension had been originally imposed by a decision and order, dated January 28, 1980, of Administrative Law Judge Albert S. Frevola, following an evidentiary hearing.² The charge against the appellant found proved by the law judge relates to his service as Second Mate aboard the SS MONTPELIER VICTORY on January 27, 1979, while the vessel, heading westbound for Baytown, was following a track south of the Florida Keys. The vessel, under the navigation of a mate who had temporarily relieved the appellant, was stranded without appreciable damage roughly 3 miles from Dry Tortugas Lighthouse, was refloated some seven hours later, and continued on to its destination. Appellant's alleged negligence involves his navigation of the vessel during a period of time that ended before the grounding actually occurred. On appeal here, the appellant essentially argues, for a variety of reasons, that the evidence does not establish that his navigation of the vessel was negligent.⁴ We agree.

¹The decision appealed was entered by the Coast Guard Vice Commandant, acting by delegation, on June 10, 1981.

²Copies of the decisions of the law judge and Vice Commandant are attached.

⁴Appellant testified that the Master reviewed the course recorder and navigation charts and indicated that they should steer

The record reveals that appellant, who was to stand a four-hour watch beginning at 1600 hours, went to the bridge in time to familiarize himself with existing conditions and plot a course fix before assuming the watch at 1600. The fix he plotted (at 1556) was consistent with earlier fixes plotted by the officer he was relieving. Several minutes later appellant observed a lighthouse through his binoculars. As he had never made this trip before and was uncertain as to the light's identity, he asked the Master to come to the bridge. The Master, a veteran of some 70 to 80 voyages through this area, verified that the lighthouse was Rebecca Shoal Light. Appellant, at the Master's direction, plotted a new fix, at 1610, utilizing a visual bearing and a radar range on the light. This fix placed the vessel some five miles south of the intended trackline. Because he did not think that the vessel could have been that far off course, appellant continued to entertain some doubt that the lighthouse they had seen was Rebecca Shoal. Notwithstanding appellant's expressed uncertainty about the sighting and the fix, the Master was satisfied that what he had observed was Rebecca Shoal Light and, apparently, that the vessel could be off course as much as appellant indicated. The Master ordered or approved a course change from 287 to 300 degrees, based on the 1610 fix, to intercept the original trackline, and left the bridge. The new course was designed to intercept the intended track approximately a mile to the south of Buoy 8A off Dry Tortugas.³

Dry Tortugas Light became visible, with the aid of binoculars, roughly a half hour later, just as the Third Mate who was to relieve appellant for a dinner break came to the bridge. Appellant still unsure of the validity of the 1610 fix, relayed his concern to his relief and told him to take a fix on the light as soon as he could get an unaided visual bearing on it. Appellant then proceeded to the messhall at 1653.

Although a visual bearing could have been taken five minutes later, the Third Mate made no attempt to obtain a fix using the light. At 1702, however, the Third Mate, responding to the helmsman's report of the sighting of a buoy, and apparently realizing that the vessel's heading would take it on the wrong (north) side of the buoy, ordered in increments that the course be altered to the left (i.e. south). The changes he ordered, however,

a course between the intended track line (287 degrees) and the course from the 1610 fix to the buoy (313 degrees).

³The Coast Guard has filed no reply to the instant appeal. We note, nevertheless, that the arguments that were presented to the Commandant on appeal from the law judge's decision are identical to the arguments that have been made to us.

appear to have been too little too late, for the vessel proceeded to ground at 1708.⁵ Subsequent investigation demonstrated that the 1610 fix (or at least the plot thereof) must have been inaccurate.

The Commandant finds appellant negligent because he did not take steps to verify the accuracy of the 1610 fix and because he took no other fixes between 1600 and 1650. We cannot accept the Commandant's view. While negligence in general involves a lack of sufficient or proper care, the existence of negligence is not dependent on the occurrence of some adverse consequence. A putatively negligent party's conduct must be evaluated without reference to the fact that a mishap occurred. In this case we cannot escape the conclusion that appellant has been found negligent not because he breached any reasonable standard of care with respect to the performance of his duties but, rather, because his actions arguably contributed to the grounding.

The flaw in the Commandant's reasoning is that he equates the fact that the appellant could have discovered and corrected the error in the 1610 fix shortly after it occurred with a duty in the appellant to have done so. That appellant could have discovered the inaccuracy in the 1610 fix, through comparisons with earlier charts and fixes or otherwise, does not compel the conclusion that his failure to do so constituted negligence.⁶ He chose, within his discretion as the vessel's navigator, to await the opportunity to obtain a new fix as check on the vessel's position. There is absolutely no basis in the record for concluding that that was not a reasonable choice for him to make. Indeed, the appellant's choice is understandable in light of the Master's active

⁵At the hearing the Master testified: "The only opinion I can form now is that the [Third Mate] needed a visual test. He stood on that bridge from 1645 until the grounding at 1708 and did nothing to avoid it, and that is impossible to understand" (tr. at 79). The Third Mate was subsequently found to have been negligent in connection with the grounding.

⁶The commandant's assertions (Dec. at 5,6) that appellant failed "exercise the ordinary precautions in accepting his '1610' position" and that "comparison between the results of the 1610 observation and the earlier recorded fixes should have been automatic" have no evidentiary basis in this case. Moreover, assuming that the appellant should have in effect ignored his superior's confidence in the vessel's position, the Commandant's opinion overlooks the possibility that Rebecca Shoal Light might no longer have been available as a visual reference for an accurate position fix even if appellant had undertaken to verify his earlier efforts.

participation in the decision to change the vessel's course.⁷ While appellant's error in taking or in plotting the 1610 fix had brought about an unnecessary course change, this was hardly a culpable circumstance. The fact that the change in effect aimed the vessel at some shallow water some 15 more miles distant is of no particular significance, since the possible need for a further course correction to avoid passage into that area was recognized at the time of the 1615 course change and its degree could have been ascertained in time to accommodate its execution without incident. It therefore makes no difference that appellant's failure to check the fix can be said to have contributed to the grounding, as the contribution was not negligent conduct. When the opportunity to take a visual bearing did not arise prior to his leaving the bridge for dinner, appellant adequately alerted his relief to the need for an early fix correction which could and should have been obtained and which should have led to a timely course change without risk to the vessel or its crew. In view of the foregoing we must reverse the finding of negligence and the order of suspension based on it.

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's appeal is granted; and
2. The decision of the Commandant in Appeal No. 2258 is reversed.

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members of the Board, concurred in the above opinion and order.

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⁷We are mindful that the Master and a mate on watch have concurrent responsibility for the safe navigation of a vessel; our recognition of the fact that appellant's election to proceed as he did may have been influenced by the Master's role in the course change should not be understood as an acceptance of appellant's argument that his entire responsibility was supervened by the Master's actions.